

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)

Rate Regulation)

To: The Commission

MM Docket No. 92-266

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

JOINT REPLY COMMENTS OF BEND CABLE COMMUNICATIONS, INC.,
CABLE MANAGEMENT CORPORATION AND RIVER VALLEY CABLE TV

In comments submitted in this proceeding on August 31, Bend Cable Communications, Inc., Cable Management Corporation and River Valley Cable TV (the "Companies") urged the Commission to reconsider the direction it was heading with respect to the treatment of taxes in the rates of companies organized as Subchapter S corporations or partnerships. In its Notice of Proposed Rulemaking in MM Docket 93-215, FCC 93-215, released July 16, 1993 ("Cost-of-Service Notice"), the Commission proposed that the tax liability generated by the revenues of Subchapter S corporations and partnerships should not be included in determining their annual expenses. Cost of Service Notice at ¶ 30.

On August 27, the Commission addressed a similar issue in its partial reconsideration of the benchmark/price cap rules. The Commission again took the position that there would be no allowance for tax liability attributable to the earnings of Subchapter S corporations and partnerships --

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this time in the context of equipment rates under the benchmark approach. First Order on Reconsideration in MM Docket 92-266, FCC 93-428, released Aug. 27, 1993, at ¶ 58 ("Reconsideration Order").

The Companies filed their original comments in this proceeding before having an adequate opportunity to review the Commission's Reconsideration Order in detail. Thus, the Companies were unaware that the Commission had reached its conclusion on Subchapter S corporation and partnership taxes without addressing a substantial body of legal precedent supporting the opposite result. Accordingly, the purpose of these reply comments is to urge the Commission to consider this issue yet again, and, in particular, to take into account both the established body of rate regulation precedent as well as sound policy reasons supporting the Companies' view.

Submissions in the reconsideration proceeding on the benchmark/price cap scheme cited and discussed an established body of rate regulation precedent expressly including the tax liability of Subchapter S corporations and similar entities in a rate-regulated entity's ratebase. See, e.g., Joint Opposition to Petitions for Reconsideration of Bend Cable Communications, Inc. et al. at pp. 9-16.

Similar support was offered in comments in response to the Commission's Cost-of-Service Notice. See, e.g., Comments

of the National Cable Television Association, at pp. 39-41; Comments of Cablevision Industries Corporation et al., at pp. 62-64. The Companies have attempted to direct the Commission's attention to these rulings in their comments in this proceeding as well. See Joint Comments at pp. 6-8.

Disallowing recovery for tax expense legitimately generated by cable companies organized as Subchapter S corporations and partnerships will have a serious adverse impact on small systems. The Subchapter S and partnership forms of organization are particularly well-suited to situations where there are few owners, and where, as the courts have observed, the owners are the company. See, e.g., Moyston v. New Mexico Pub. Serv. Comm'n, 412 P.2d 840, 848 (1966). This situation frequently exists in the case of small companies. The partnership form of organization also is attractive to small businesses because they lack easy access to debt capital and sometimes can more easily raise capital through partnership equity.

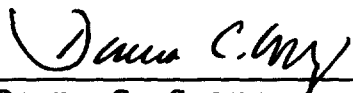
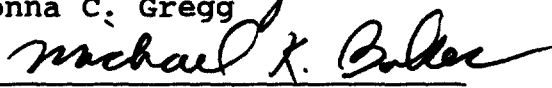
By launching this proceeding, the Commission has demonstrated its concern for the impact of the rate regulations on small companies. Denying recovery of legitimate tax expenses to business organizations adapted for and frequently used by small companies is yet another instance in which the Commission's rate regulations could have a disproportionately harsh impact on small companies.

The Companies therefore urge the Commission to alter its current approach when it adopts cost-of-service rules and in any rules or policies adopted in this proceeding as well.

Respectfully submitted,

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